

REMARKS

This responds to the Office Action mailed on February 6, 2006. Claims 1-3, 8-15, and 33-34 are amended, claims 5-7 and 16-31 are canceled, and claims 35-38 are new.

Response to Examiner's Response to Arguments

Applicants have amended the claims to address the Examiner's implied §112 second paragraph rejection.

§103 Rejection of the Claims

Claims 1-4, 8-15 and 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Godin et al. (U.S. 5,890,138, hereinafter, "Godin") in view of Ng (U.S. 6,405,175, hereinafter, "Ng").

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). To do that the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.*

The *Fine* court stated that:

Obviousness is tested by "what the combined teaching of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 878 (CCPA 1981)). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hosp. Sys.*, 732 F.2d at 1577, 221 USPQ at 933. And "teachings of references can be combined only if there is some suggestion or incentive to do so." *Id.* (emphasis in original).

The M.P.E.P. adopts this line of reasoning, stating that:

In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or

suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)).

Applicants respectfully submit that the Office Action did not make out a *prima facie* case of obviousness for at least the reason the cited prior art fails teach or suggest all elements of the independent claims, as contended in the February 6, 2006 Office Action (Office Action).

Independent claim 1 recites:

communicating via a first network information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system;

generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from actions of other users of the network based sales system; and

communicating the feedback indication to the user interface.

The Examiner has alleged, on page 3 of the Office Action, that Godin teaches, "A networked sales method, including: presenting via a first network a sales screen to a user showing a plurality of price choices for an item (col. 3, lines 15-48 and fig. 1 (6 & 16)." (Page 3, Sect. 5) Applicants respectfully disagree with this characterization of the Godin reference. The cited Elements, 6 and 16 of Figure 1, are the Internet (network) and "production images," respectively. Although element 6 may suggest a network, Applicants fail to see how element 16, or any of the other elements and figures of Godin, illustrates the communicating via a first network information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system, as recited in claim 1. In fact, element 16 is not referenced in the Godin written description, making it ambiguous and unclear as to what "production images" may or may not be. Column 3, lines 15-48, merely describes the elements of the system, and primarily a database and its potential field values.

In sum, the cited passage, the remainder of Godin's disclosure, and what is disclosed in the Ng reference does not described communicating via a first network information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system, as recited in claim 1.

Adding what is taught in Ng to Godin fails to teach or suggest what is recited in claim 1, namely, “generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from actions of other users of the network based sales system; and communicating the feedback indication to the user interface.”

The Office Action alleges at pages 3 and 4 that col. 8, lines 38-67 to col. 9, lines 19-29 and lines 40-53 of Ng provides what is missing from Godin:

It would have been obvious to one having ordinary skill in the art at the time the invention was made to generate a feedback indication for the item, at each of the plurality of price choices, using available supply and sales level information generated from actions of other users and conveying the feedback indication to the user on the sales screen and to modify in Godin in view of Godin's sales screen showing price choices for an item and because such a modification would allow Godin to give either positive or negative feedback about the price of an item. (Emphasis added).

Applicants respectfully disagree with the Examiner’s characterization of the prior art in view of the recited claim language. Regarding feedback, Ng discusses, “User B can leave feedback on the product by returning to the product-database web site and filling out a feedback form. The feedback can be either positive or negative. If user B really liked the product and the database information was correct and useful, he can leave a positive rating or comment.” (col. 8, 50-56, emphasis added) In other words, the feedback in Ng is a positive or negative rating of the product based on the user’s opinion. In contrast, claim 1 recites, “generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from actions of other users of the network based sales system” Ng does not use supply and sales level information generated from actions of other users of the network based sales system but merely uses a user’s opinion about the product.

Lastly, Ng discloses a second user may correct a first user’s price entry via a product display screen. However, this does not teach, “generating a feedback indication for the item...using available supply and sales level information generated from actions of other users...,” as recited in claim 1.

Therefore, for at least these reasons, claim 1 and all claims dependent therefrom are patentable over Godin in view of Ng. The same arguments that applied to claim 1 are also applicable to independent claims 11 and 15 and their associated dependent claims. Therefore it

is respectfully requested the rejections of these claims be removed and the claims placed in condition for allowance.

Additionally, neither Godin nor Ng, alone or in combination, teach generating sales information for an item at each of a plurality of price levels; and communicating the plurality of price levels in association with the generated sales information to a user, or generating sales information for an item at each of a plurality of price levels; and communicating a message to a user based on a price level for the item reaching a threshold value associated with one of the plurality of price levels, as recited in the newly presented independent claims.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney 408-278-4045 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

DAVID TRAYNOR ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

408-278-4045

By

Larry J. Johnson
Reg. No. 36,861

Date July 6, 2006

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6 day of July, 2006.

Name

Dawn R. Shaw

Signature

Dawn R. Shaw